

# **REMARKS**

The present amendment is in response to the Office Action dated March 22, 2005, where the Examiner rejected claims 1-28. Claims 1, 7, 13, and 19 were rejected on 102(e) grounds. Claims 2-6, 8-12, 14-18, and 20-28 are rejected on 103(a) grounds.

## **A. Priority**

Applicant disagrees with the Examiner's comments about the priority claimed in this patent application. However, to expedite the prosecution of this patent application, the Applicant has decided to provide only limited comment to preserve the record for further discussion. Thus, the Applicant reserves the right to comment at a later time, and the following paragraph refers to only portions of text that refute the Examiner's conclusion that there is no reference to claimed subject matter.

In particular, the Applicant respectfully submits that the Examiner has elected to apply an overly conservative reading of the Applicant's terminology, namely, buffering video, data, and voice signals in connection with a common shared bus. The 09/162,313 application provides support for the buffering of video, data, and voice signals in *inter alia* FIG. 6 and on Page 14: line 8 through Page 15: line 12. The combiner 89 and encoders 11, 51-58 provide the buffering. See Page 10: line 30 through Page 11: line 14 for reference to "store and retransmit" and "random access memory." The common shared bus is located between the encoders 51 – 58 and the diplexor 77, on Page 9: line 26 through Page 10: line 29.

Therefore, Applicant contends sufficient support is provided in the parent patent application for the claims in this CIP. Since adequate support is provided in the 09/162,313 patent application cited by the Applicant, the Massucci '667 reference is an

improper reference that can not be cited to for purposes of a 102 or 103 rejection, because the Applicant's filing date of 9/28/98 precedes the filing date of Massucci '667, which is 9/10/99.

**B. Drawings**

The Examiner has identified informalities in his Office Action. The informalities have been corrected as described below.

For FIG. 2, a replacement paragraph has been provided that corrects the inadvertent numbering mistake that was made by the Applicant.

For FIG. 4 and FIG. 5, replacement drawings are submitted herewith to correct the inadvertent mistake regarding the Smart NIM and Smart NIW.

For reference number 66, a replacement paragraph has been provided.

For reference number 140, a replacement paragraph has been provided, and a replacement FIG. 4 has been amended to include a new reference number 141.

For reference numbers 120 and 122 at Page 13, line 13, a replacement paragraph has been provided and a replacement FIG. 3 with new reference numbers 96 and 98.

No new matter has been added.

**C. Specification**

As per the Examiner's request, the Abstract has been amended.

The Specification has been corrected to properly identify NOC 102 with a number of replacement paragraphs.

The Specification has been corrected to properly identify the downstream combiner 172.

**D. Claim Rejections – 35 USC § 102**

The Examiner has rejected independent claims 1, 7, 13, and 19 under 35 USC 102(e) grounds as being anticipated by Masucci et al., U.S. Patent 6,498,667 hereinafter referred to as “Masucci ‘667.” Although, the Applicant disagrees with Examiner’s use of Masucci ‘667 because Applicant’s patent filing precedes Masucci ‘667, the Applicant has elected to amend the claims to expedite the prosecution of this patent application.

The Federal Circuit stated in W.L. Gore & Associates v. Garlock, Inc., “anticipation requires the disclosure in single prior art reference of each element of the claim under consideration.” W.L. Gore & Associates v. Garlock, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Amended independent claims 1, 11, 21 and 31 reflect the addition of a substantive limitation that comprises communicating the various digital video signals, digital data signals, and/or voice signals across a common shared bus to a downstream module comprising a downstream QAM modulator, in which the common shared bus is located in the digital headend system. In summary Masucci ‘667 is directed to a passive optical network and does NOT teach a downstream module comprising a downstream QAM modulator.

Additionally, Applicant respectfully submits that the Masucci ‘667 patent is not on point. Applicant claims a “common shared bus.” It appears the Examiner has interpreted the Masucci ‘667 passive optical network (PON) 16 as reading on Applicant’s “common shared bus.” The PON 16 in Masucci ‘667 is intended to permit communication between a central terminal and plural remote terminals. See Masucci ‘667 at col.1: line 30 -60. Here, the common shared bus is located at the digital headend.

**E. Claim Rejections – 35 USC § 103**

The Examiner has rejected claims 2-6, 8-12, 14-18, and 20-28 are rejected on 103(a) grounds. The Examiner argues non-obviousness over Masucci '667 in view of Humpleman, U.S. Patent No. 5,940,387 (hereinafter "Humpleman '387"). In light of the currently amended claims, the Applicant respectfully disagrees with this rejection and provides arguments to overcome this rejection below.

Generally, the Examiner's arguments are directed to dependent claims which depend from the independent claims 1, 7, 13, and 19. The remaining independent claim 26 has also been amended to include the same limitation as the independent claims.

As stated in Section 2143 of the MPEP:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. Section 2143, MPEP Rev. 2.0, May 2004, pg. 2100-129.

The combination of Masucci '667 in view of Humpleman '387 does not teach communicating the various digital video signals, digital data signals, and/or voice signals across a common shared bus to a downstream module comprising a downstream QAM modulator, in which the common shared bus is located in the digital headend system. Thus, Masucci '667 and Humpleman '387 fail to satisfy the 35 USC 103 obviousness standard because both patents fail to teach each element of the amended independent claims.

**E. Conclusion**

For all the foregoing reasons, allowance of claims 1-28 pending in the present application is respectfully requested.

Respectfully Submitted;



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Dated: September 22, 2005

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